

BICENTENNIAL MAN – THE NEW MILLENNIUM ASSIMILATIONISM AND THE FOREIGNER AMONG US

*Lolita K. Buckner Inniss**

I. LAW AND FILM AS AN OUTGROWTH OF THE LAW AND LITERATURE MOVEMENT

Much has been written about law and film.¹ Law and film can be seen as an outgrowth of the law and literature movement, which is typically understood as being roughly divided between considerations of law *as* literature, and law *in* literature.² Most law and film scholarship falls into the latter category, frequently treating the portrayal of lawyers and legal proceedings in films.³ One of the difficulties of treating law and film is determining whether a particular work can be rightly said to be sufficiently about the law to

* Assistant Professor, Cleveland State University, A.B. Princeton University, J.D. University of California at Los Angeles. The author wishes to thank the following persons for their insightful comments: Professors April Cherry and Patricia Falk of Cleveland-Marshall College of Law, Associate Dean Kevin Johnson of the University of California, Davis and Professor Victor Romero of Penn State Dickinson Law School. The author also gratefully acknowledges the participants in the 2001 Mid Atlantic People of Color Legal Scholarship Conference for their feedback on an early draft. Finally, the author thanks Michaeline Carrig and Holli Goodman for their very able assistance in preparing the manuscript.

1. See, e.g., PAST IMPERFECT: HISTORY ACCORDING TO THE MOVIES (Mark Carnes et al., eds., 1995); LEGAL REELISM: MOVIES AS LEGAL TEXTS (JOHN DENVIR ed., 1996); Paula C. Johnson, *The Social Construction of Identity in Criminal Cases: Cinema Verite and the Pedagogy of Vincent Chin*, 1 MICH. J. RACE & L. 347 (1996); Charles Musser, *Film Truth, Documentary, and the Law: Justice at the Margins*, 30 U.S.F. L. REV. 963 (1996); Richard K. Sherwin, *Law Frames: Historical Truth and Narrative Necessity in a Criminal Case*, 47 STAN. L. REV. 39 (1994).

2. DAVID A. BLACK, LAW IN FILM 112, 129 (1999); see also IAN WARD, LAW AND LITERATURE 3-22 (1995) (discussing separately the debates between proponents and opponents of the utility of law in literature and law as literature).

3. Much of law and film has been described as part of courtroom genre, as seen in the films TWELVE ANGRY MEN (MGM/UA Studios 1957), INHERIT THE WIND (MGM/UA Studios 1960), and TO KILL A MOCKINGBIRD (Universal Studios 1962). However, it has been argued that within the courtroom genre there are subgenres, such as films focusing on juries (TWELVE ANGRY MEN), or films focusing on military courts (A FEW GOOD MEN (Columbia/TriStar Studios 1992)). It has further been suggested that films about police and detective work, or prisons, may themselves be other examples of subgenres within courtroom genre. See BLACK, *supra* note 2 at 59.

merit the "law and" label.⁴ Does the mere reference to some aspect of the law create a "legal" film? Is it the duration of the representation of law or legal themes which makes for such a film?⁵ Because films can and do touch upon various themes at once, the depiction of legal themes may only be one vehicle for forwarding the plot. This being the case, one potential critique of law and film is whether, in fact, any value or significance exists either in labeling films as "legal" or in using such films as legal hermeneutic tools.

Such concerns about the value of identifying legal films makes them susceptible to the same critiques made of law and literature. There is the danger that the work may be invested with either a particular meaning which is not there, or with meaning where there is none. At times the use of metaphor for understanding legal problems may result in a situation where "fiction become[s] its meaning."⁶ Looking to such works of fiction as a source of legal understanding may be "like reading *Animal Farm* as a tract on farm management."⁷ Notwithstanding such critiques, I do not believe that it is the ability to label films "legal" which makes them valuable as tools for understanding and interpreting law. Rather, it is a film's ability to help the legal scholar look beyond legal text itself. Legal films, like law and literature, "establish a way of looking at the law from the outside, a way of comparing it with other forms of literary and intellectual activity"⁸ Legal films "achieve escape velocity from a system of representation that cannot point or see beyond a restricted set of histories and assumptions."⁹

However, legal films, unlike law and literature, are themselves performative in nature; that is, they revolve around the process of narration and storytelling, just as legal processes do.¹⁰ Thus, legal films are "stories about the process of storytelling, or narratives about narrative."¹¹ This property is known as "self-reflexive," and is

4. Or, as one of my colleagues stated more broadly in a discussion about the merits of scholarly work on cultural studies, the problem with cultural studies is that there may be nothing at all to what you observe. It may have no greater legal, political or social significance. This, of course, is a critique which may be applied to any area of scholarly endeavor.

5. BLACK, *supra* note 2 at 55-62.

6. Richard Posner, *The Ethical Significance of Free Choice: A Reply to Professor West*, 99 HARV. L. REV. 1431, 1433 (1986).

7. *Id.*

8. Cynthia G. Hawkins-Leon, "Literature as Law" *The History of the Insanity Plea and a Fictional Application Within the Law and Literature Canon*, 72 TEMP. L. REV. 381, 384 (1999) (quoting JAMES B. WHITE, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION* xx-xxi (1973)).

9. BLACK, *supra* note 2 at 115.

10. *Id.* at 55.

11. *Id.*

seen in many other nonlegal films about narrative, such as film versions of Mary Shelley's *FRANKENSTEIN*,¹² or of *THE THOUSAND AND ONE NIGHTS*.¹³ The notion of legal films as self-reflexive is most clearly seen in the courtroom drama, in which the legal story unfolds via the testimony of witnesses and other presentations of evidence before a tribunal.¹⁴ The tribunal or courtroom film is probably the most common depiction in legal films, as the courtroom is often analogized to the stage.¹⁵

The stage changes in the more complex legal films, however. Such films intermix some aspect of the actual courtroom drama either with depictions of a figurative or functional courtroom,¹⁶ or with depictions of broader and more symbolic legal themes and ideals.¹⁷ Thus, legal or law-related films may be more subtle, and may focus on "less obvious issues of identity, power, and ideology in a broader sociolegal framework."¹⁸

II. THE TRADITIONAL GENRES OF THE LEGAL FILM AND THE USE OF SCIENCE FICTION

Most legal films, like much of law *in* literature, fall into the genres of realism, or romance. In considering the works of fiction and their distribution along a spectrum which begins with historicized fiction, moves onward to realism, delves into romance, and ends in

12. *Id.* Mary Shelley's *FRANKENSTEIN* tells the tale of a group of people, including Lord Byron, Mary Wollstonecraft, Godwin Shelley, and Percy Bysshe Shelley who set out to tell each other ghost stories. Mary Shelley's tale is even more intensely self-reflexive, for she commences her tale as a letter from a man to his sister, in which he relates the story of Victor Frankenstein, who relates his own life story. See MARY SHELLEY, *FRANKENSTEIN*, (Stanley Applebaum & Candace Ward eds., Dover Publ'ns 1994) (1831).

13. *THE THOUSAND AND ONE NIGHTS* is a traditional Arabic folktale which chronicles the stories told by a newly married young woman who tells story after story to prevent her husband from putting her to death.

14. BLACK, *supra* note 2, at 64-65, 73-76. See, for example, the film *WITNESS FOR THE PROSECUTION* (MGM/UA Studios 1958), in which the story of a man who denies murder charges is told almost entirely via his own testimony and that of witnesses.

15. See, e.g., Janice E. Schuetz & Kathryn Holmes Snedaker, *Courtroom Drama: The Trial of the Chicago Eight*, in COMMUNICATION AND LITIGATION: CASE STUDIES OF FAMOUS TRIALS 217 (Janice E. Schuetz & Kathryn Holmes Snedaker eds., 1988); Milner S. Ball, *The Play's the Thing: An Unscientific Reflection on Courts Under the Rubric of Theater*, 28 STAN. L. REV. 81 (1975); David Ray Papke, *Conventional Wisdom: The Courtroom Trial in American Popular Culture*, 82 MARQ. L. REV. 471 (1999); John E. Simonett, *The Trial as One of the Performing Arts*, 52 A.B.A. J. 1145 (1966).

16. See BLACK, *supra* note 2, at 66 (referencing the thieves den in *The Oxbow Incident* as an example of a functional courtroom).

17. See Margaret M. Russell, Foreword: *Law In Living Color*, 5 ASIAN L.J. 1, 3 (1998).

18. *Id.*

the realm of fantasy, legal films typically fall squarely in the middle of the spectrum.¹⁹ One recent film, *BICENTENNIAL MAN*,²⁰ however, explores the theme of law and film through the genre of science fiction. Although it may seem like an odd vehicle for presenting often sobering themes, science fiction is not an unlikely genre for the exploration of legal themes. Science fiction "explores political, legal and ideological alternatives, commenting upon both our present and possible futures."²¹ Science fiction, through its heavy dependence on the concept of alterity or "Otherness," often reflects our own tendency to fear or dislike those who are unlike us.²² Science fiction is, in summary, about the Alien among us.²³

Science fiction is modern myth-making at its finest. Most particularly, it is an ideal vehicle for exploring cultural myths. Science fiction is perhaps our best hope of exploring certain cultural myths, because films in the genres of romance or realism often trap us in the tired, stereotypical depictions of the Other without apology.²⁴ So-called classical Hollywood cinema has frequently

19. For a discussion of the concept of fictional spectrum, see *ELEMENTS OF LITERATURE*, 105 (Robert Scholes et al. eds., 1978).

20. *BICENTENNIAL MAN* (Buena Vista/Sony 1999).

21. Bruce L. Rockwood, *Law, Literature, and Science Fiction*, 23 *LEGAL STUD. F.* 267, 271 (1999).

22. See Christine Corcos et al., *Double-Take: A Second Look at Cloning, Science Fiction and Law*, 59 *LA. L. REV.* 1041 (1999).

23. Note that the word alien is used with equal frequency in both science fiction and immigration jurisprudence; because of the negative connotations of the word, some immigration scholars eschew the word. See, e.g., Victor Romero, *Expanding the Circle of Membership by Reconstructing the Alien: Lessons from Social Psychology and the "Promise Enforcement" Cases*, 32 *U. MICH. J.L. REFORM* 1 (1998). Indeed, the word alien is rife with negative connotations in languages besides English. It has been observed for example that in Latin and some other ancient languages, there was but one word for "stranger" and "enemy". MICHAEL WALZER, *SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY* 32 (1983).

24. See, e.g., Ediberto Roman, *Who Exactly Is Living La Vida Loca?: The Legal and Political Consequences of Latino-Latina Ethnic and Racial Stereotypes in Film and Other Media*, 4 *J. GENDER RACE & JUST.* 37, 47-48 (2000). Roman describes the "dominant gaze" and blacks in cinema by citing Professor Margaret Russell: "the stereotypical depiction of blacks as part of the 'dominant gaze.' The dominant gaze refers to 'the tendency of mainstream culture to replicate, through narrative and imagery, racial inequalities and biases which exist throughout society.' The powerful and evil genius of the gaze 'lies in projecting stereotypes and biases as essential truths. Truths which mainstream America believes and which minorities battle in their day-to-day lives.'" *Id.* (internal citations omitted).

See also Taunya Lovell Banks, *Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building*, 5 *ASIAN L.J.* 7 (1998) (discussing the tendency of Asian Indians in 1990s Mississippi to align themselves against African Americans to maintain their middle position in the American racial hierarchy); Robert S. Chang, *Dreaming in Black and White: Racial-Sexual Policing in The Birth of a Nation, The Cheat, and Who Killed Vincent Chin?*, 5 *ASIAN L.J.* 41 (1998) (discussing

diminished and trivialized the lives of racial, ethnic, and sexual Others, sometimes to the point of caricature.²⁵ Some have argued that the film industry creates mythology "by transforming *history into nature*, by presenting culturally determined situations as the inevitable product of natural law."²⁶ Though science fiction often starts with the normative, it deals not only with the human, but very often also ponders the role of the subhuman or the superhuman. For this reason, science fiction provides a fresh approach to exploring the Other in our society. Because of its fluidity, science fiction is a form of popular culture which easily permits the exploration of the influences that shape our notions of law and justice.²⁷ Science fiction may be the ultimate tool for the merger of legal fictions or concepts of law, and "fictions of legality,"²⁸ for the genre has the freedom to use the imaginary to mediate for the disenfranchised.²⁹

In BICENTENNIAL MAN, a film based upon the short story by Isaac Asimov,³⁰ Robin Williams portrays Andrew the android (a robot in the form of a human) who struggles to be accepted as a human.³¹

racial-sexual policing as a means of promoting white purity); Frederick Dennis Greene, *Cultural Colonization In the Hollywood Film: The Harlem Debates - Part 2*, 5 ASIAN L.J. 63 (1998) (criticizing the portrayal of African Americans in film); Peter Kwan, *Invention, Inversion and Intervention: The Oriental Woman in the World of Suzie Wong, M. Butterfly, and The Adventures of Priscilla, Queen of the Desert*, 5 ASIAN L.J. 99 (1998) (criticizing the depiction of Asian women in film).

25. KRIN GABBARD, JAMMIN' AT THE MARGINS: JAZZ AND THE AMERICAN CINEMA 2 (1996).

26. *Id.* (citing ROLAND BARTHES, MYTHOLOGIES (Annette Lavers trans., Hill and Wang eds. (1972))).

27. See Corcos, et al., *supra* note 22, at 1044-45.

28. Lenora P. Ledwon, Legal Fictions: Constructions of the Female Legal Subject in Nineteenth Century Law and Literature 4 (1992) (unpublished Ph. D. dissertation, University of Notre Dame) (on file with the University of Notre Dame Library).

29. *Id.*

30. ISAAC ASIMOV, THE BICENTENNIAL MAN AND OTHER STORIES 135-210 (1976).

31. The term robot is believed to have been coined by the "Czech playwright Karel Capek, who wrote the play R.U.R. ("Rossums Universal Robots") about an Englishman, Rossum, who manufactured human beings in quantity" to serve as laborers. ISAAC ASIMOV, ROBOT VISIONS 6 (1990). His goal was to give human beings lives of leisure. *Id.* The concept of the manufactured humanoid being who serves the will of humans has long been seen in literature. Perhaps most familiar is the medieval story of the golem, an artificial human being said to have been made from clay by Rabbi Loew of sixteenth century Prague. See, e.g., Michael Broyde, *Cloning People: A Jewish Law Analysis of the Issues*, 30 CONN. L. REV. 503, 520-523 (1998); Dena S. Davis, *Religious Attitudes Towards Cloning: A Tale of Two Creatures*, 27 HOFSTRA L. REV. 509, 510-513 (1999). The golem was created in order to fight injustices perpetrated against Jews, and was powered by the sacred name of God. *Id.* Ultimately, the golem went out of control and had to be destroyed. *Id.* This theme is also seen in Mary Shelley's FRANKENSTEIN, which tells of a being built from the body parts of dead human beings by Dr. Frankenstein. *Id.* at 510; see also ASIMOV, ROBOT VISIONS 2-8.

One could easily dismiss this film as a combination of allegory and literary allusion run amuck. Nonetheless, the film touches upon themes of alienage and foreigner status, the meaning of assimilation, slavery and racial inequality, gay marriage, and obsession with youth, all while cloaking itself in Judeo-Christian religious symbolism, Greek myth, and Shakespearean drama. The themes of alienage and foreigner status are particularly timely in view of the most recent recasting of the myth of assimilation. I have termed this development the "new millennium assimilationism:"³² the notion that even in our post-immigration society, *belonger*³³ status is to be embraced by all, at all costs.³⁴ We see the Orwellian vision of embracing seemingly opposing goals—multiculturalism is a positive, but at the same time pluralism is to be eschewed. There is, as some commentators have asserted, a concurrent desire to "denationalize"

32. "Assimilationism" is seen frequently in legal literature. It is distinct from mere assimilation; it is a more systematic, and systemic, attempt to bring unity and homogeneity in the face of apparent nonconformity. "Intelligent assimilationism" writes one commentator, is "free of the mindless sloganeering that so often masquerades as multiculturalism." William E. Naff, Book Review, 556 ANNALS AM. ACAD. POL. & SOC. SCI. 198, 199 (1998). One commentator writes of "strategic assimilationism" as a way of seeking immigrant power and equality. See Francisco Valdes, *Under Construction - LatCrit Consciousness, Community, and Theory* 85 CALIF. L. REV. 1087, 1097, 1101 (1997). Another commentator describes assimilationism as "the socially- or legally-created obligation to conform to norms other than one's own. In general, only dominant-group norms can be assimilationist; by definition, subordinate groups lack the social power to impose their norms on members of the dominant group." Barbara J. Flagg, *Enduring Principle: On Race, Process, and Constitutional Law* 82 CALIF. L. REV. 935, 977. It is perhaps most aptly described as follows: "Assimilationism can be thought of as the mirror image of multiculturalism. Assimilationism has three principal elements. First, assimilationism requires one to abide by dominant norms or a core culture. Second, it rejects race consciousness. Third, it repudiates the equal value of cultures." George Martinez, *Latinos, Assimilation and the Law: A Philosophical Perspective*, 20 CHICANO-LATINO L. REV. 1, 6 (1999). At least some commentators believe that assimilationism is waning in view of the increasingly vital non-state forms of association. See, e.g., Peter J. Spiro, *Questioning Barriers to Naturalization*, 13 GEO. IMMIGR. L.J. 479, 519 (1999).

33. "Belonger" is a term used in parts of the Caribbean and in some British commonwealth countries to connote those persons and entities who have certain rights and privileges of citizens yet are not actual members of the polity. Though these rights and privileges may go as far as the franchise, most often they concern the right to own land. Very often these rights stem from familial relationships. See, e.g., BILL MAURER, RECHARTING THE CARIBBEAN: LAND, LAW AND CITIZENSHIP IN THE BRITISH VIRGIN ISLANDS 147-49 (1997) (discussing the concept of *belonger* status and how it relates to national and cultural identity). I adopt it here to connote membership in the American polity, and not so much to describe a particular immigration status.

34. As I have written previously, "[i]f, as W.E.B. Du Bois stated, the problem of the twentieth century was the problem of the color line, then the problem as we head into the twenty-first century will be the problem of the borderline." Lolita Buckner Inniss, *Dutch Uncle Sam: Immigration Reform and Notions of Family*, 36 BRANDEIS J. FAM. L. 177, 177 (1998).

to relinquish sovereignty in some spheres, while at the same time "renationalizing" or embracing sovereignty in much of its splendor, replete with the ideal of homogeneity.³⁵ This is in order to vest all persons with what one commentator has described as the three keys to membership in the American body politic: the sharing of a uniform ideology of the United States, an emotional attachment to the United States, and a uniform interpretation of our governing laws.³⁶ This new millennium assimilationism is the uneasy meeting of two previously unreconciled ideals: melting-pot theory and ethnic-pluralist theory.³⁷ New millennium assimilationism is easily seen in the arena of immigration law and policy. *BICENTENNIAL MAN* delivers two messages on the true nature of assimilation: not all are easily able to fit into melting-pot³⁸ society, at least not without significantly altering the self,³⁹ and sometimes death, whether spiritual, cultural, or physical, is the price of assimilation.

III. THE MYTH OF ASSIMILATION

Assimilation is a word fraught with ambivalence.⁴⁰ Some believe that it is a "gentle process"⁴¹ of mixing which should be the ultimate goal of the newcomer to the United States.⁴² For others, it is a "dirty word" which symbolizes the suppression of all that is different.⁴³ Assimilation, when viewed as a goal of immigration, was ostensibly

35. IMMIGRATION: A CIVIL RIGHTS ISSUE FOR THE AMERICAS 15-18 (Suzanne Jonas & Suzie Dod Thomas eds., 1999).

36. IMMIGRATION AND CITIZENSHIP IN THE 21ST CENTURY 110 (Noah M.J. Pickus ed. 1998).

37. As Stephen Steinberg writes, "[g]enerally speaking, the battle lines have been drawn between an earlier generation of sociologists who emphasized the assimilating tendencies among immigrant minorities, and a more recent group of writers who insist that ethnicity is a powerful and enduring factor in American life." STEPHEN STEINBERG, *THE ETHNIC MYTH: RACE, ETHNICITY, AND CLASS IN AMERICA* 46-47 (1981).

38. "Melting pot" is a phrase which came into common parlance in the late 1800s. See IMMIGRATION AS A FACTOR IN AMERICAN HISTORY 147 (Oscar Handlin ed., 1959).

39. According to Gunnar Myrdal, "[c]onsiderable efforts are directed toward 'Americanizing' all groups of alien origin. But in regard to the colored peoples, the American policy is the reverse. They are excluded from assimilation." GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* 54 (Transaction Pub. 1996) (1944).

40. See, e.g., Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CAL. L. REV. 863, 866 (1993).

41. LINDA CHAVEZ, *OUT OF THE BARRIO: TOWARDS A NEW POLITICS OF HISPANIC ASSIMILATION* 161 (1991).

42. See, e.g., IMMIGRATION AND CITIZENSHIP IN THE TWENTY-FIRST CENTURY, *supra* note 36, at 3-39.

43. CHAVEZ, *supra* note 41, at 161.

well beyond the abilities of the most "different" types of foreigners.⁴⁴ And yet, the integration of immigrants into American society continues to concern us, even as we reach what could be called a "post-immigration" society—that is, we now know, and accept, that virtually everyone in the United States comes from elsewhere. We now accept that racial, ethnic, cultural, and religious differences are to be tolerated, if not embraced, at least in theory. However, it is precisely because our theories of inclusiveness do not translate into practice that we can still count assimilation as belonging to the realm of myth.

Myth is frequently so broadly used that it becomes difficult to clearly define it in the abstract term.⁴⁵ Myths are said to concern stories of a world which preceded the present world.⁴⁶ Myths often concern the lives of sacred or divine beings, or of the origins of things in our present world.⁴⁷ Myths are said to have been created to teach lessons of conduct or to bring about desired ends.⁴⁸ Myths often are associated with particular rites in a society.⁴⁹ Myths may involve infusing the events of human life with elements of hope and dream.⁵⁰ In the realm of myth, as in the realm of folktale, recurring motifs exist which can be identified even despite variances in geography, race, language, or culture.⁵¹ Myth is a mechanism for bringing meaning to what otherwise might be the meaningless events and occurrences of our lives.⁵²

44. See, e.g., *Fong Yue Ting v. United States*, 149 U.S. 698, 717 (1893) and *Chae Chan Ping v. United States*, 130 U.S. 581, 595 (1889) (The Chinese Exclusion Case), both of which considered the inability of the Chinese to assimilate. See also Lolita K. Buckner Inniss, *Tricky Magic: Blacks as Immigrants and the Paradox of Foreignness*, 49 DEPAUL L. REV. 85, 113 (1999), which considers the inability of blacks to achieve assimilation over the hundreds of years of their presence in the United States. "Blacks were arguably the model for cultural pluralism, existing as an indigestible mass" in American society. It has been said by one commentator that "the pluralist thesis from the outset was encapsulated by white ethnocentrism." JOHN HIGHAM, *SEND THESE TO ME: JEWS AND OTHER IMMIGRANTS IN URBAN AMERICA 196-98* (1975).

45. See, e.g., STITH THOMPSON, *THE FOLKTALE*, 9-10 (1946) .

46. *Id.*

47. *Id.*

48. *Id.* at 386.

49. *Id.* at 386-87; see also BRUCE LINCOLN, *DISCOURSE AND THE CONSTRUCTION OF SOCIETY: COMPARATIVE STUDIES OF MYTH RITUAL AND CLASSIFICATION* 5 (1989).

50. THOMPSON, *supra* note 45 at 389-90; see also FRANZ BOAS, *RACE, LANGUAGE AND CULTURE* 405 (1948); CLAUDE LEVI-STRAUSS, *STRUCTURAL ANTHROPOLOGY* 202-28 (Claire Jacobson & Brooke Grundfest Schoepf trans., Anchor Books 1967) (1963); MIRCEA ELIADE, *MYTH AND REALITY* 6 (Ruth Nanda Anshen ed., Willard Trask trans., 1963).

51. THOMPSON, *supra* note 45, at 20.

52. See Mitchel de S.-O.-L'E. Lasser, "Lit. Theory" Put to the Test: A Comparative Literary Analysis of American Judicial Tests and French Judicial Discourse, 111

Cultural myth is a particular variety of myth which is much evoked in the legal arena. It has gained particular currency in the legal analysis of matters concerning gender, sexuality, and sexual assault. In these contexts, cultural myth is closely associated with stereotype, and most particularly with those stereotypes concerning sexuality and gender roles and responses.⁵³ Both cultural myth and

HARV. L. REV. 689, 751 (1998). Here the author explores the work of Roland Barthes and his description of myth:

According to Barthes's *Mythologies*, myth is a system of communication definable not "by the object of its message, but by the way in which it utters this message." Barthes works toward his definition and analysis of myth by recalling that all signifying systems are composed of three elements: the signifier, the signified, and the sign. Using the classic example of a bouquet of roses offered as a token of affection, Barthes explains that the roses constitute the signifier, affection constitutes the signified, and the joining or association of the two (i.e., the offering of affection-laden roses) constitutes the sign.

Id.; see also CLAUDE LEVI-STRAUSS, MYTH AND MEANING 15-17 (1979); see generally CLAUDE LEVI-STRAUSS, THE JEALOUS POTTER (Bénédicte Chorier trans., 1988).

53. See, e.g. *Cammermeyer v. Aspin*, 850 F. Supp. 910, 929 (W.D. Wash. 1994) (discussing a lesbian's challenge of her discharge from military service due to her sexual orientation; court states that "[p]rejudice, whether founded on unsubstantiated fears, cultural myths, stereotypes or erroneous assumptions, cannot be the basis for a discriminatory classification."); *Meinhold v. United States Dep't of Def.*, 808 F. Supp. 1455, 1458 (C.D. Cal. 1993) (discussing homosexual man's challenge of his discharge from the military after publicly acknowledging his homosexuality; "[t]he Department of Defense's justifications for its policy banning gays and lesbians from military service are based on cultural myths and false stereotypes. These justifications are baseless and very similar to the reasons offered to keep the military racially segregated in the 1940's."); *Dale v. Boy Scouts of Am.*, 734 A.2d 1196, 1242 (N.J. 1997), *rev'd*, 530 U.S. 640 (2000) (discussing a man's challenge of the revocation of his membership in the Boy Scouts of America after being publicly identified as the head of a lesbian and gay organization; the court quotes from Gregory M. Herek, *Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research*, 1 L. & SEXUALITY 133, 134 (1991), regarding the "considerable body of social science data" that counter "longstanding cultural myths and stereotypes that depict lesbians and gay men as immoral, criminal, sick, and drastically different from what most members of society would consider 'normal'"); *People v. Taylor*, 552 N.E.2d 131, 136 (N.Y. 1990) (permitting introduction of expert testimony on rape trauma syndrome under certain circumstances; "Because cultural myths still affect common understanding of rape and rape victims and because experts have been studying the effects of rape upon its victims only since the 1970's, patterns of response among rape victims are not within the ordinary understanding of the lay juror"); *Gutierrez v. Iulo*, 591 N.Y.S.2d 711, 713 (1992) and *People v. Reid*, 475 N.Y.S.2d 741, 742 (1984) (both *Gutierrez* and *Reid* cite *Taylor* on the use of expert testimony in cases of rape trauma syndrome and allude to the cultural mythology); *Commonwealth v. Lloyd*, 567 A.2d 1357, 1357-58 (Pa. 1989) (appellant appealed the trial court's refusal to allow him full access to a child rape victim's psychiatric records; cites *Pittsburgh Action Against Rape* on the existence of cultural myth in discussions of rape); *In re Pittsburgh Action Against Rape*, 428 A.2d 126, 138 (Pa. 1981) (challenging trial court's order permitting defense counsel for accused rapist to examine a complaint of the rape filed with a rape crisis center; "[h]owever, the cultural myths still exist and still influence the handling of sexual

stereotype are frequently used interchangeably to connote a circumscribed belief system which associates certain traits with certain persons.⁵⁴

Cultural myth, however, is frequently seen in a broader sense in other types of legal literature.⁵⁵ Cultural myths "are fictionalized, deeply traditional stories about the origins and histories of people and their understandings of themselves, symbols, and institutions."⁵⁶ Cultural myth has been equated with "an interpretive framework,"⁵⁷ and has been even more broadly described as "a long-held . . . metaphor for how the world works."⁵⁸ "Culture," as one commentator writes, "is the medium of the present" which "simultaneously . . . mediates the past."⁵⁹ Cultural myth is a way of bringing cohesiveness to what might otherwise be chaos as we struggle to understand the

assaults by the law enforcement agencies."); *DeMuth v. Miller*, 652 A.2d 891 (Pa. 1995) (defendant, being sued on a noncompetition clause in an employment contract, counterclaimed that he was wrongfully terminated because of his appearance on television representing a gay and lesbian coalition; dissent cites to *Cammermeyer*, *supra*, and its discussion of cultural myth).

54. For a discussion of the meaning and uses of stereotype in the development of legal theories, see, e.g., Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 COLUM. J. GENDER & L. 1, 6-7 (1998).

55. See, e.g., Kevin R. Johnson, "Melting Pot" or "Ring of Fire"? Assimilation and the Mexican-American Experience, 85 CAL. L. REV. 1259, 1277-78 n.53 (1997) (discussing the assimilation "mandate" imposed upon racial minorities by society and how this is part of the cultural myth of American homogeneity); Richard Delgado & Jean Stefancic, "Hateful Speech, Loving Communities: Why Our Notion of 'A Just Balance' Changes So Slowly", 82 CAL. L. REV. 851 (1994) (discussing competing cultural myths in the battle over whether there ought to be "Hate Speech" rules); Robin K. Magee, *The Myth Of The Good Cop And The Inadequacy Of Fourth Amendment Remedies For Black Men: Contrasting Presumptions Of Innocence And Guilt*, 23 CAP. U. L. REV. 151, 160-61 (1994) (discussing the paradigm of the "good cop" and how this paradigm is built upon a broader cultural myth); Michael L. Perlin, *Unpacking The Myths: The Symbolism Mythology Of Insanity Defense Jurisprudence*, 40 CASE W. RES. L. REV. 599, 608 (1990) (discussing the issues behind the insanity defense and the power of cultural myth in legal decision making).

56. Magee, *supra* note 55, at 160 n.36.

57. See, e.g., Isabelle R. Gunning, *Diversity Issues in Mediation: Controlling Negative Cultural Myths*, 1995 J. DISP. RESOL. 55, 71. But the author makes clear that in her use of cultural myth, she hopes to "capture those aspects of the prejudice that thrive in our society which are unconscious. *Id.* at 71 n.64. She also means "to include prior ideas about categories of people which, though in and of themselves do not put the group's members in a bad light, still under the circumstances limit any individual group member from being different than the characterization portrayed in the myth." *Id.*

58. Peter L. Reich, *Environmental Metaphor in the Alien Benefits Debate*, 42 UCLA L. REV. 1577, 1577 (1995).

59. LISA LOWE, IMMIGRANT ACTS 2 (1996).

American ideal, and most particularly the American legal ideal.⁶⁰

Cultural myth is many times associated with aesthetics, and aesthetic vehicles such as music, literature, and film are often seen as the natural mechanisms for conveying the scope and meaning of the myths.⁶¹ There is no doubt that immigration as a whole, and assimilation in particular, is a myth-laden aspect of the legal landscape.⁶² As one commentator has written, the varying relationships between and among citizens and aliens "combine the symbolic power of myth; the emotional power of deeply held ideals, fears, and antagonisms; the psychological power of family narratives; and the political power of clashing public and private interests."⁶³ In *Bicentennial Man*, the cultural myth of assimilation is writ large, for in Andrew's struggle we see a metaphor for the assimilation struggle of the alien Other.

IV. THE STORY OF ANDREW THE ANDROID

Andrew, it seems, is the ultimate in low-paid domestics. He is the millennial version (it's 2005) of the house slave. He is owned outright by a wealthy San Francisco family, and employed as the android-of-all work: cooking, cleaning, and minding the children. He lives in a damp, dusty basement where he is expected to retire each night to recharge his battery. Andrew does not eat, does not sleep,

60. See, e.g., Walter O. Weyrauch, *Unconscious Meanings of Crime and Punishment*, 2 BUFF. CRIM. L. REV. 945, 956-57 (1999) (reviewing MARTHA GRACE DUNCAN, *ROMANTIC OUTLAWS, BELOVED PRISONS: THE UNCONSCIOUS MEANINGS OF CRIME AND PUNISHMENT* (1996)) (stating "[i]mportant cultural myths are preserved in principle, although they are not adhered to in fact. Thus, the fundamental rights to a jury trial, to confront one's accusers, to present witnesses in one's defense, to remain silent, and to be convicted by proof beyond reasonable doubt are left intact and waived at the same time."). See also Jennifer M. Russell, *The Race/Class Conundrum and the Pursuit of Individualism in the Making of Social Policy*, 46 HASTINGS L.J. 1353 (1995).

61. See Sheldon H. Nahmod, *The Sacred Flag and the First Amendment*, 66 IND. L.J. 511, 530-31 (1991). In discussing the flag and First Amendment jurisprudence, the author looks to the Court's reliance on various aesthetic vehicles to develop various aspects of cultural mythology:

While the flag symbolizes national unity to him [Rehnquist], it also represents America's imagined past and present. It is no accident that Chief Justice Rehnquist made poetry and song – quintessential vessels for cultural myths – a crucial part of his story of the flag's participation in the birth and life of America. Patriotic poetry and song promote the notions that the flag is a vital component of the American experience and that it therefore deserves veneration.

Id.

62. Indeed, the "immigrant" and the "foreigner" are largely constructs of myth and imagination, and often fears about such persons fuel the need for legislation limiting immigration. See, e.g., Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1998).

63. PETER H. SCHUCK, *CITIZENS, STRANGERS, AND IN-BETWEENS* 1 (1998).

and needs no clothes. He has none of the unfortunate bad hygiene associated with alien Others.⁶⁴ Andrew does not appear unkempt or sloppy,⁶⁵ for he wears no clothes.⁶⁶ He is not dirty and does not smell bad, for he cannot; he produces no waste products, he never has flatulence. He is the ultimate non-person. In an interesting twist on the role of the human domestic, Andrew does not serve to live; rather, he quite literally lives to serve. Service is the sole purpose of his creation and continued existence, and he is a member of a class of such beings. Beings such as Andrew are not intended to have capacities higher than those required for the job.⁶⁷ For example,

64. Americans have long asserted that foreigners and other racial and ethnic outsiders smelled. See Felicity Barringer, *False Rape Report Upsetting Campus*, N.Y. TIMES, Dec. 12, 1990, at A21, in which a college student filed a false report of rape, alleging that two black men with "particularly bad body odor" had raped her at knifepoint. In *Mensah v. Resources for Human Dev.*, 72 Empl. Prac. Dec. (CCH) P45 138 at 4 (1997), an employer told an African employee that "his office smelled like a dead rat," and attributed it to African idiosyncrasies concerning hygiene. See also *United States v. Mendez-De Jesus*, 85 F.3d 1, 2 (1st Cir. 1996), in which a border patrol officer identified an undocumented alien woman and her smuggler companion. The court summarized the officer's comparison of the two people:

[The officer] suspected that the female passenger was an illegal alien: she had damp and dirty clothing, ragged hair, and an odor associated with urine and defecation on boats. Mendez [the smuggler], on the other hand, did not give the impression of having recently arrived illegally via boat. He appeared tidy, denied understanding Spanish and told Lugo that "I'm from here."

Id. See also *United States v. Adegbite*, 846 F.2d 834, 836 (2d Cir. 1988) (a case in which two D.E.A. agents claimed to have been able to identify Nigerian drug suspects as Africans because of their "sloppy," "not well coordinated" dress and "oily" skin."); Rubin Navarette, Jr., *Why local cops shouldn't enforce immigration laws*, THE SEATTLE TIMES, Feb. 7, 2001, at B6 (a policeman claimed to have found undocumented aliens because of "strong body odor common to illegal aliens").

65. With the exception of a temporary state of disarray caused by his fall from a window, mentioned *infra* at p.14.

66. Andrew's nakedness is a vivid reminder of his lack of personhood. Without clothes, Andrew is not simply *less* of a person; he is not a person at all. Clothes have long been used to distinguish between castes, and in conjunction with this determining the attire of the employee has long been within the prerogative of the employer. For example, in many service jobs, uniforms are often required. See, e.g. DANIEL E. SUTHERLAND, *AMERICANS AND THEIR SERVANTS* 29 (1981), (discussing the livery and uniforms for servants in upper class households so that servants, though well dressed, would be distinct from the masters). Even in middleclass homes, modest dark clothing was required of servants, again to distinguish them from "members of the family." *Id.* Even in modern employer-employee relationships, employees may be required to wear a particular type of clothing. See, e.g., Katharine T. Bartlett, *Only Girls Wear Barrettes: Dress and Appearance Standards, Community Norms, and Workplace Equality*, 92 MICH. L. REV 2541, 2543 (1994). See *infra* notes 90-91, regarding Andrew's decision to clothe himself.

67. In ROBBIE, Isaac Asimov's first short story, he treated the theme of the robotic servant, where a robot is said to have been created solely for the purpose of caring for children. See Isaac Asimov, *Robbie*, in *ROBOT VISIONS* 48 (1990). See also Dorothy

Andrew has no notion of leisure for its own sake.⁶⁸ Andrew is, as was said of early immigrant workers, the model of "contented industry."⁶⁹

Though Andrew is designed to somewhat resemble a human being, anthropathy is apparently to be avoided. Andrew is a metallic thing, ruled by Asimov's "three fundamental rules of robotics":

Rule #1 A robot may not injure a human being or, through inaction, allow a human being to come to harm.

Rule #2 A robot must obey the orders given to it by human beings except where such orders would conflict with the First Law.

Rule #3 A robot must protect its own existence as long as such protection does not conflict with the First or Second Law.⁷⁰

The first law creates a prohibition against either affirmative acts of harm, or omissions which cause harm to humans. The second law gives human beings the complete dominion over robots, except where they seek to order robots to injure other human beings. The third law, while giving robots some right to bodily integrity, renders such rights subject to the robot's higher duty to humans. Andrew must be willing, as is any good domestic, to subvert his own interests and desires to those of the masters. Andrew is there to serve, even if such service places him in physical peril. For example, when one of the children of the household orders Andrew to jump out of a window, merely for her amusement, he does so. He works unceasingly to gain the favor of the mistress of the house, who dislikes him and is at first opposed to his presence, for he is too much in evidence for her taste.⁷¹ Andrew is a domestic servant machine to be used, and abused, until he is used up, like domestic servants of other eras.

Dunbar Bromley, *Are Servants People?*, SCRIBNERS, Dec. 1933, at 94; LINDA MARTIN & KERRY SEGRAVE, *THE SERVANT PROBLEM: DOMESTIC WORKERS IN NORTH AMERICA* (1985); WINTHROP D. JORDAN, *WHITE OVER BLACK*, 80-81, 123 (1969).

68. Indeed, there is a tradition of believing that leisure is a corrupting influence on servants. See SUTHERLAND, *supra* note 66, at 99-102.

69. STEPHEN H. LEGOMSKY, *IMMIGRATION AND REFUGEE LAW AND POLICY* 294 (2d ed. 1997) (citing the 1897 veto message of Grover Cleveland opposing literacy requirements for immigrants).

70. Isaac Asimov sets forth the governing rules for robots in several of his works; the rules were first explicitly set forth in his short story "Run Around." See ASIMOV, *ROBOT VISIONS*, *supra* note 31, at 6-8. There are variations in the expression of these laws, which are also known as the three laws of robotics, and supplemental laws that are developed over the course of Asimov's exploration of their implications in many novels and stories. *Id.* at 8.

71. Servants are to be sphinx-like in nature, unseen, and "unknown and unknowable". See *infra* note 107.

V. THE WRENCH IN THE WORKS, OR WHY ANDREW HAS A QUIRK

Andrew has a quirk, though. Apparently unlike other androids, he has feelings. For example, notwithstanding his nonhuman status, he has an emotional response to jumping out of the window. He *dislikes* it, knowing that he will be injured. He flinches at the very memory of it. He also acts and thinks independently of his human handlers and creates works of art—wood carvings and highly stylized clocks which proliferate throughout the house. The clocks point to the irony of Andrew's robot status, for unlike his human counterparts, time and its ravages do not affect Andrew. He is both ageless and timeless, traits often thought to be typical of domestic "Others."⁷² Ultimately, Andrew's creative work is sold for profit, which raises the dilemma of who owns the money. As his master indicates, Andrew belongs to him, and is a form of property, and thus what he produces must belong to the master.⁷³ Moreover, Andrew does not, as his mistress argues, go shopping or eat at fancy restaurants; he thus has no need for money.⁷⁴ But as Little Miss, the youngest child, points out, it is Andrew who does the work. This Lockean labor theory dilemma is rather neatly resolved when the master creates a bank account for Andrew, who uses the money for his own maintenance,

72. See, e.g., HARPER LEE, *TO KILL A MOCKINGBIRD* 117-18 (J.B. Lippincott 1960). In the novel, the narrator considers the age of the family's maid, Calpurnia:

"Are you *that* old?"

"I'm older than Mr. Finch even." Calpurnia grinned.

... "What's your birthday, Cal?"

"I just have it on Christmas, it's easier to remember that way—I don't have a real birthday."

"But Cal," Jem protested, "you don't look even near as old as Atticus."

"Colored folks don't show their ages so fast," she said.

"Maybe because they can't read. Cal, did you teach Zeebo?"

"Yeah, Mr. Jem, there wasn't even a school when he was a boy. I made him learn, though."

Zeebo was Calpurnia's oldest son. If I had ever thought about it, I would have known that Calpurnia was of mature years—Zeebo had half-grown children—but then I had never thought about it.

Id.

73. See, e.g., A. Leon Higginbotham, Jr. & Barbara K. Kopytoff, *Property First, Humanity Second: The Recognition of the Slave's Human Nature in Virginia Civil Law*, 50 OHIO ST. L.J. 511, 528-529 (1989) (describing both common law and statutory law schemes which forbade property ownership by slaves).

74. See generally, ELIZABETH CLARK-LEWIS, *LIVING IN, LIVING OUT* (1994) (in which author interviews a number of African-American women born and reared in the South who then worked in Washington, D.C. as live-in domestics). On the question of whether she received or managed any money flowing from her work as a live-in servant, one woman stated: "When you got up here [Washington, D.C.], as far as money'd go, up here was just like home. Never did you get any in your hand. . . . You was helping out, but never saw no money that you'd earned." *Id.* at 81.

relieving his master of the burden of his upkeep.⁷⁵

Andrew "enjoys" his work, a concept apparently foreign to other robots. In the first of several odd admixtures throughout the film, Andrew's hedonist's view of the Puritan work ethic becomes a key to his claim of humanity, and seems as important as his traits of autonomy and creativity. These three traits are the American essence of the American psyche, for it is upon these values that our country was founded. The Founders believed that the new nation would spring from the desire to work for the common good of all, the desire for self-governance, and the willingness to invent the American ideal.⁷⁶ This dichotomy between human capacity for independence and creativity and robot dependence is much like the dichotomy between the American ideal, and the foreigner, who is often accused of lacking in creativity, independent thinking skills, and desire for self governance.⁷⁷

75. This resolution is much reminiscent of the slavery era practice of "renting out" highly skilled slaves or allowing them to work for themselves, and then granting them the "privilege" of supporting themselves and their families. See, e.g., HARRIET JACOBS, INCIDENTS IN THE LIFE OF A SLAVE GIRL 11-14 (Henry Louis Gates, Jr. ed., 1988) (1861). A modern version of this "renting out" is seen in families "hosting" young women in the United States Information Agency's au pair program. The au pair program is a "cultural program" in which families sponsor young women (and increasingly young men) from other countries to serve as child care providers in their households. They are "permitted" to work up to forty five hours per week on child care duties, in exchange for a fixed sum per week and access to some educational benefits, and roundtrip airfare home. Although the terms of the program do not permit the au pairs to offer service outside of the program, some families often hire out the au pairs in order to reduce their own financial liabilities. See Linda Kelly, *The Fantastic Adventure of Supermom and the Alien: Educating Immigration Policy on the Facts of Life*, 31 CONN. L. REV. 1045, 1057-60 (1999).

76. Pickus, *supra* note 36, at 110 (quoting Michael Walzer, *What Does it Mean to be an 'American'?*, 57 SOCIAL RESEARCH 590-614 (September 1957) ("American symbols and ceremonies are culturally anonymous, invented rather than inherited, voluntaristic in style, narrowly political in content.")).

77. See, e.g. MICHAEL JONES-CORREA, BETWEEN TWO NATIONS 39-40 (1998) (citing EDWARD LEWIS, AMERICA: NATION OR CONFUSION: A STUDY OF OUR IMMIGRATION PROBLEMS 333 (1928)). The author proposes that people of other nations lack the essential will to self-govern:

We are told that the capacity for self-government is not an inborn trait, that it can be acquired, and that the peoples of other nations have not had a chance to show their powers. . . . One sometimes wonders if the sober restraint, the initiative, the independent self-reliance, the ability at team-play, which are essential to self-government are in any way native to the populations of southern and eastern Europe and whether, if they come to dominance, our politics may not entirely change its tone and become the fevered or fitful record of alternate despotism and revolution.

Id.; see also PETER BRIMELOW, ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER 123-133 (1995) (voicing his fears that increased immigration may lead to increased balkanization, destruction of the nation-state, due to the failure of certain immigrants to embrace American political ideals); see also THOMAS SOWELL,

Andrew's owner/master takes him back to the manufacturing company to determine what accounts for his unusual traits. There, Andrew and his master are met by a nervous company executive eager to avoid damage claims, and thus seeks to reacquire Andrew in order to "fix" him, by cleansing him of his independent ways. Andrew's owner, however, is the modern-day liberal boss man. He defends Andrew's right to be unique, which quickly is interpreted as his duty to be exceptional. Andrew becomes the "exemplary Other," an Other or outsider who exists beyond negative stereotypes.⁷⁸ Exemplary Others are unlike the downtrodden masses of regular Others; they are almost as good as insiders. Moreover, exemplary Others must, by definition, be recognized by the mainstream society as exemplary, and they must themselves have a belief in their own "specialness" which sometimes leads to this mainstream recognition.⁷⁹ The exemplary Other is somewhat akin to the myth of

THE ECONOMICS AND POLITICS OF RACE 45-49 (1983) (lauding what he describes as the Chinese disdain for political and social movements, their good behavior and hard work, and their "specialization" in the more "difficult" "demanding" and "lucrative" fields of "medicine, the natural sciences and engineering").

78. See, e.g., STEPHEN L. CARTER, REFLECTIONS OF AN AFFIRMATIVE ACTION BABY 47-69 (1991) (discussing what he terms the "best black syndrome"); CHAVEZ, *supra* note 41, at 170 (decrying "affirmative action politics" which unfairly compare the "son of a Mexican American doctor or lawyer" with "the child of a Mexican farm worker"); RICHARD RODRIGUEZ, HUNGER OF MEMORY 14-15, 19, 45-48 (1982) (describing his success in achieving the American dream, and how he moved away from the "private" world of his Spanish-speaking home to embrace the public language of the mainstream, English). Such exemplary Others may sometimes experience stress and anger at the realization that exemplary Other status does not fully shield them from the slings and arrows generally reserved for the undifferentiated mass of Others. See, e.g., David B. Wilkins, *On Being Good and Black*, 112 HARV. L. REV. 1924, 1964-69 (1999) (reviewing PAUL M. BARRETT, *THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA* (1999) (a book discussing Larry Mungin, a black "double Harvard"-educated lawyer turned down for partnership at a Chicago-based elite law firm)); see generally ELLIS COSE, *THE RAGE OF A PRIVILEGED CLASS* (1993). The concept is neatly summed up in a passage from PAUL M. BARRETT, *THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA* 6 (1999), in which Barrett writes of black attorney Larry Mungin:

The law firm crushed [his] self image by making him feel like a failure. Worse, he walked away feeling foolish that for his whole life, he had "gone the extra mile to show people—whites and black, but mostly whites—that I wasn't one of those blacks, one of the dangerous ones, the bad ones. Or one of the complainers, the ones demanding special treatment." Mungin has assumed that to get ahead, he needed to distinguish himself from the negative stereotypes of inner-city African-American men . . . "To be honest," he confessed, . . . "I wanted to show that I was like white people: 'Don't be afraid. I'm one of the good blacks.'"

79. CARTER, *supra* note 78 at 47-52 (discussing how the "best black syndrome" relates to black professionals and mainstream recognition). Although the black professional is considered the best in his or her field, he or she is always considered the "best black lawyer" and not "simply the best."

the "model Minority."⁸⁰

A model minority is a racial or ethnic group which has gained success or acceptance in the mainstream by adopting the values of the mainstream.⁸¹ This term is typically applied to Asian Americans, though in the past other groups, such as Jews, have been seen as model minorities.⁸² Model minorities exist in contrast to "problem minorities" such as blacks.⁸³ The myth of the model minority may be wielded as a shield and a sword by members of the mainstream. If asked why more isn't done for disadvantaged members of minority groups, the model minority exists to show that either enough has been done, or that nothing need be done if one group can succeed. The myth is also used to denigrate those racial and ethnic minority groups who do not succeed.⁸⁴ However, the myth of the model minority differs from the exemplary Other in that exemplary Others, while sometimes present in large numbers in some settings, are lone forces. While they may belong to social and political organizations peopled by exemplary Others, or even live in neighborhoods in proximity to other exemplary Others, the essential nature of the exemplary Other is to eschew certain types of group visibility and to aim for passage into the white mainstream. Exemplary Others are individual agents who must seek out their own individual milieus. They must, as one writer has rather poignantly stated it, find their own white people.⁸⁵

In a modern retelling myth of the "exemplary Other", Andrew's

80. See, e.g., Frank H. Wu, *Changing America: Three Arguments About Asian Americans and The Law*, 45 AM. U.L. REV. 811, 813-814 (1996) (discussing how the model minority myth relates to Asian Americans).

81. *Id.*

82. See Larry Cata Becker, *Culturally Significant Speech: Law, Courts, Society, and Racial Equity*, 21 U. ARK. LITTLE ROCK L. REV. 845, 877 (1999).

83. Wu, *supra* note 80, at 814.

84. See *id.*

85. In *HIGH COTTON*, novelist Darryl Pinckney writes of the anguish of the black upper middle-class experience. In one passage, he describes an exemplary Other grandfather, and the grandfather's efforts to somehow upstage his grandson's efforts to achieve exemplary Other status:

Grandfather himself was an escapee from that tight, closed world where every Negro was said to know every other Negro and no distinction was drawn between classroom and home. . . . But my father hadn't discovered until graduation day at Howard that its president was an old friend of Grandfather's. Grandfather didn't stay for the commencement exercises because my uncle was to graduate the same afternoon from M.I.T., which was, to Grandfather, the better occasion. Perhaps he wanted to make an appearance at Westfield [the grandson's school] precisely because of his regard for white schools. I wanted to tell Grandfather to go out and find his own white people.

DARRYL PINCKNEY, *HIGH COTTON* 104 (1992).

master takes him home where he begins a course of instruction with Andrew. Under the protection of his owner/master, Andrew, the "exemplary Other," becomes the honorary insider. The viewer can easily imagine here the sort of camaraderie which must have existed between, say, Phyllis Wheatley and her owners.⁸⁶ In gaining familial status, Andrew, like Phyllis, "transcended" both race and biology.⁸⁷

VI. THE "NATURALIZATION" OF ANDREW AND HOW CLOTHING MAKES THE MAN

Andrew is exposed to the civilizing influence of piano lessons conducted by the youngest child in the family, a girl who later becomes Andrew's love interest. As she matures, Andrew falls in love with his "Little Miss," who is both protector and teacher. She returns Andrew's love, but she tells him indirectly that she cannot commit herself to him because he is too different. She goes on to marry a mortal man who is able to do what Andrew clearly cannot do: father her children.

Faced with the rejection of Little Miss, Andrew takes the first of several steps towards what one might rather literally called "naturalization": he seeks ultimately to become a natural man, and he begins this journey by having his face and body rendered more humanoid. This tension between the biological and the mechanical, between that which is begotten and that which is made,⁸⁸ exists as

86. Phyllis Wheatley was an African woman born in Senegal in 1753 who was seized and sold into United States slavery at the age of seven. Though purchased as a servant, Phyllis was allowed by her owners to learn to read and write once her intelligence became evident, and is said by some to have enjoyed a "family-like" relationship with her owners. Eventually, she wrote and published poetry which made her famous, and she was ostensibly the first African-American to be published. *See e.g.*, KARLA F.C. HOLLOWAY, *CODES OF CONDUCT: RACE, ETHICS, AND THE COLOR OF OUR CHARACTER* (1995). In *THE GOOD BLACK*, the author writes of Larry Mungin's honorary membership in the families of his white friends: "Despite some obvious cultural differences, Larry felt a strong tie to the Nathan family, and they in turn embraced him as something like an honorary nephew." BARRETT, *supra* note 78, at 28.

87. Another trait of the exemplary Other is that they are always expected to "transcend"—that is, to convince themselves, if not others, that race or gender or the source of "Otherness" does not matter. Such transcendence is apparently a necessary element of full assimilation and the move towards an "Other-blind" society. *See generally* Christopher Edley Jr., *Color at Century's End: Race in Law, Policy, and Politics*, 67 *FORDHAM L. REV.* 939 (1998) (discussing racial prejudices and policy at the turn of the century).

88. The phrase "begotten, not made" is part of the Nicene Creed, one of the most widely utilized statement of Christian faith which is traditionally said at the Eucharist, or the celebration of Holy Communion. The phrase is a reference to one the ultimate Christian paradox of Christ's humanity notwithstanding his divinity. The Nicene Creed reads in relevant part:

begotten, not made,
of one Being with the Father.

another thread winding its way through the film. Andrew, with a newly cast face which shows his emotions, serves as an usher at the wedding of Little Miss, complete with tuxedo and tails. Like the first man Adam who tastes of the forbidden fruit, once Andrew wears clothes at the wedding, he no longer wishes to go "naked."⁸⁹ We might consider here the broad irony in the expression clothing makes the man, and the extent to which it is true for Andrew. Andrew's adoption first of formal wear, and then of all clothing is clearly a metaphor for his desire to belong.⁹⁰

VII. DOMESTIC SERVITUDE AS THE METAPHOR FOR FOREIGNER STATUS

Andrew's status as a domestic servant is the principal vehicle for understanding Andrew's outsider status. Domestic service has traditionally been the ultimate in low status occupations.⁹¹ As a domestic, Andrew occupies a position that is seen as the historic milieu of the immigrant and other outsiders.⁹² As some commentators

Through him all things were made.
For us and for our salvation
he came down from heaven:
by the power of the Holy Spirit
he became incarnate from the Virgin Mary,
and was made man.

THE BOOK OF COMMON PRAYER 71 (The Church Pension Fund 1945) (1549).

89. See *Genesis* 3:7 ("And the eyes of them both were opened, and they knew that they were naked; and they sewed fig leaves together, and made themselves aprons.")

90. A number of commentators have considered upon the complexities of clothing and status. Changes in dress become one of the ways that immigrants seek to become part of American society. See, e.g., SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY* 46 (1991) (discussing Japanese immigrants' adoption of western clothing). See also Regina Austin, "A Nation of Thieves": *Securing Black People's Right to Shop and Sell in White America*, 1994 UTAH L. REV. 147, 156-158 (1994) (author considers consumption of goods by black people and how it has often been associated with alienation from the broader society). "[T]he quest for status through consumption is hopeless because status, like style, is a moving target." *Id.* at 156-57. However, some blacks may be forgiven for attempting to attire and coif themselves according to mainstream (read "white") norms if those efforts are associated with amelioration of the race (to wit, the black middleclass) as opposed to mere mindless consumption of the lower classes. See also CORNELL WEST, *RACE MATTERS*, 37-38 (1993), in which the author considers the serious business attire of Malcolm X and Martin Luther King, and how their dress exemplified their beliefs.

91. See, e.g., SUTHERLAND, *supra* note 66, at 3. The author writes: "Traditionally, domestic service was regarded as a menial, even degrading occupation, filled with ignorant, immoral, and incompetent folk who could not earn their living at any honorable trade." *Id.*

92. See, e.g., *id.* at 4. As Sutherland writes, "It was the American experience with Negroes and immigrants, however, that firmly entrenched the social stigma. . . . Xenophobia further branded domestic service. Immigrants, from the early nineteenth century into the twentieth century, occupied a subordinate position and an unenviable reputation in the United States." *Id.* See also STEINBERG, *supra* note 37, at

have pointed out, because domestics have typically been women who worked for other women in private homes, and because women are traditionally devalued and the home is not seen as a place of productive work, a domestic can have no real status.⁹³ They are, in effect, "slaves of slaves."⁹⁴ Moreover, because domestic work is often bound up with the notion of "homemaking," or "helping out" around the house, such domestic work becomes not simply labor to be performed, but part of the love or loyalty owed to the "family." This is true whether that family consists of one's own biological family or the employer's family; domestic work is often not seen as "labor" at all.⁹⁵ This becomes increasingly the case when the domestic worker has foreigner status.⁹⁶

153. Steinberg writes:

From the vantage point of their employers, immigrants made ideal servants. In the first place, they could be paid little since they had few alternative sources of employment. Perhaps for the same reasons, or perhaps because they came from societies where rank was taken for granted, foreigners also tended to make more pliable and less disgruntled servants.

Id. Increasingly, labor migration as a whole has been subject to increased feminization, with domestic service becoming the principal occupation of the greatest number of migrants. See GREGORY A. KELSON AND DEBRA L. DELAET, EDS. *GENDER AND IMMIGRATION* 46-47 (1999); Joan Fitzpatrick & Katrina R. Kelly, *Gendered Aspects of Migration: Law and the Female Migrant*, 22 HASTINGS INT'L & COMP. L. REV. 47, 58 (1998) (discussing the migration of women from poor Asian state to more affluent nations to work as domestics).

93. Taunya Lovell Banks, *Toward a Global Critical Feminist Vision: Domestic Work and the Nanny Tax Debate* 3 J. GENDER RACE & JUST. 1, 44 (1999) (citing Phyllis Palmer, *Housework and Domestic Labor: Racial and Technological Change*, in MY TROUBLES ARE GOING TO HAVE TROUBLE WITH ME: EVERYDAY TRIALS AND TRIUMPHS OF WOMEN WORKERS 80 (Karen Brodtkin Sacks & Dorothy Remy eds., 1984)). "Domestic work has .. been the occupation that most clearly defines women's class, race, and ethnic differences, for it is an occupation in which some women (poor, black, ethnically subordinate) have worked for wages paid by other women (usually middle class, white, or ethnically dominant)." *Id.* See also PHYLLIS PALMER, *DOMESTICITY AND DIRT: HOUSEWIVES AND DOMESTIC SERVANTS IN THE UNITED STATES 1920-1945* (1989); MARY ROMERO, *MAID IN THE U.S.A.* (1992); BETTINA BERCH, *THE SPHINX IN THE HOUSEHOLD: A NEW LOOK AT THE HISTORY OF HOUSEHOLD WORKERS* REVIEW OF RADICAL POLITICAL ECONOMICS 16 (1984); Joan Fitzpatrick, *The Gender Dimension of U.S. Immigration Policy*, 9 YALE J.L. & FEMINISM 23, 42 (1997) (stating that "women are expected to perform unpaid work in the home that is regarded as nonwork").

94. In an apt comparison, writer Zora Neale Hurston wrote of black women as the mules of the world, in that black men are expected to cater to whites, and black women are subject to black men. ZORA NEALE HURSTON, *THEIR EYES WERE WATCHING GOD*, 14 (Henry Louis Gates, Jr. ed.) (1937).

95. See ROMERO, *supra* note 93, at 21.

96. This was seen recently when it came to light that United States labor secretary nominee Linda Chavez had hired an undocumented alien to work in her home. Chavez maintained that she had taken the woman in as a favor, and that no employer-employee relationship existed or was ever was intended. John J. Miller, a reporter with the NATIONAL REVIEW and a personal friend of Chavez, maintained that he had

In one of the trenchant ironies of the film, a male robot is cast as a domestic. Two questions arise here. First, why would a robot, an apparently inanimate object, need to be gendered at all? Second, if gender need be assigned, given the tradition of women as domestics, why would the robot be cast as male? In the United States, domestic service usually functioned as a both a gender and a racial/ethnic divide, with women of color, and or foreign women being consigned to that role far more frequently than other women.⁹⁷ Given the essential femininity of the domestic role, men who served in such capacities were often seen as rather weak and effeminate. Outsider men were most often subjected to this "emasculatation" by being assigned women's work. This is easily seen in the assignment of such duties to Asian men and other men of color in early United States history.⁹⁸

visited the Chavez home during the time the undocumented woman lived there, and that though she seemed to have no clear relationship to the Chavez family, and though he did not understand her presence at the house, he believed her to be a "houseguest" who did odd jobs:

Actually, I didn't get to know Mercado very well. But I did recall her, and Chavez wanted my observations. I remembered Mercado as a houseguest, someone who lived with the family for reasons I never fully understood and, frankly, never thought about. Sometimes she was in the home the whole day, and sometimes she wasn't there at all. Chavez wanted to know if I had thought she was an employee, such as a live-in maid, and I said no. If that had been true, I would have seen her vacuuming the carpets, mopping the floor, and dusting the office. I didn't recall her doing any of these things. I did remember her doing the odd chore, such as washing the dishes. What I saw was someone pitching in to help around the house, just as any family member or guest would do. And Mercado certainly wasn't a nanny, the youngest of Chavez's three children was 13 or 14 years old and didn't require that kind of attention. No, my impression of Mercado was that she definitely wasn't an employee.

John J. Miller, *The Chavez Debacle: A Personal Account*, NATIONAL REVIEW, Feb. 5, 2001, at 35.

Though the woman (Mercado) received approximately \$1,500 over a two year period, she believed that it was charity, not wages. The woman believed that she had not been paid to do housework. She even recalled that she had not *done* any work, only a litany of "certain things" which apparently she viewed as favors to the homeowner: "Mrs. Mercado said she did occasional household chores, but did not feel exploited. 'When Linda would go on a trip, she would ask me to do certain things: take care of the kids, the dogs, things around the house,' Mrs. Mercado said. 'Sometimes she would ask me to iron the suit she was going to put on, things like that.' Eric Schmitt, *Onetime Illegal Immigrant Sheltered by Chavez Recalls Painful Past*, N.Y. TIMES, Feb. 8, 2001, at A20.

97. See Romero, *supra* note 24, at 27. See generally Naomi Cahn, *Gendered Identities: Women and Household Work*, 44 VILL. L. REV. 525 (1999); Evelyn Nakano Glenn, *Cleaning Up/Kept Down: A Historical Perspective on Racial Inequality in "Women's Work"*, 43 STAN. L. REV. 1333 (1991); Katharine Silbaugh, *Commodification and Women's Household Labor*, 9 YALE J.L. & FEMINISM 81 (1997).

98. See, e.g., LISA LOWE, IMMIGRANT ACTS 11 (1996) ("From 1850 until the 1940s, Chinese immigrant masculinity had been socially and institutionally marked as different from that of Anglo and Euro American 'white' citizens owing to the forms of

Men of color, who were often immigrants or part of the slave labor force, were more frequently concentrated in feminized forms of work such as those in the service sector.⁹⁹ Moreover, it has been observed that domestic work assignments have been frequently used to humiliate, subordinate, or punish men in institutional settings.¹⁰⁰ American men often found domestic service degrading because it seemed in opposition to the American model of success in the work world.¹⁰¹ Men who entered service were often past the age of attaining more valued employment, and had very frequently failed at other occupations.¹⁰² Film depictions of male domestics, particularly men of color, often served to drive home the notion that such men were objects of derision.¹⁰³ Nevertheless, at the same time, there is an interesting aspect of male supremacy suggested in the male gender of the robot. It was often the case that when men were employed as servants, it was to enhance the status of the employer. As Historian Daniel E. Sutherland asserts:

Male servants (commonly known as flunkys) became the ultimate status symbol. More often than females, male servants fulfilled a social role rather than an economic or productive one. They were paid for servility; their function was to emphasize the social position of employers. Male retainers received twice the wages of most female servants while doing about half as much work.¹⁰⁴

Like many domestics of the past and the present, both the enslaved and nominally free, Andrew has no home of his own. He

work and community that had been historically available to Chinese men as the result of the immigration laws restricting female immigration.”).

99. *Id.* at 11-12.

100. Lenore Davidoff, *The Rationalization of Housework*, in *DEPENDENCE AND EXPLOITATION IN WORK AND MARRIAGE* 123 (Diana Leonard Baker & Sheila Allen eds., 1976).

101. SUTHERLAND, *supra* note 66, at 60.

102. *Id.*

103. Who could forget the ingratiating character Hop Sing, the Chinese “houseboy” on the television show “Bonanza”, the eye-rolling antics of befuddled black chauffeur Birmingham Brown in the Charlie Chan film series, the servile housekeeper Hey Boy in the television show “Have Gun Will Travel,” or the smooth domesticity of black butler Rochester on “The Jack Benny Show”? For a further discussion of how such characters functioned, see JANNETTE L. DATES & WILLIAM BARLOW, *SPLIT IMAGE: AFRICAN-AMERICANS IN THE MASS MEDIA* (2d ed. 1990); Greene, *supra* note 24; Keith Aoki, *Is Chan Still Missing? An Essay About the Film Snow Falling on Cedars and Representations of Asian Americans in U.S. Films*, 7 *UCLA ASIAN PAC. AM. L.J.* 30 (2001); and Keith Aoki, “Foreign-Ness” & Asian American Identities: *Yellowface*, *World War II Propaganda*, and *Bifurcated Racial Stereotypes*, 4 *UCLA ASIAN PAC. AM. L.J.* 1 (1996).

104. SUTHERLAND, *supra* note 66, at 15.

lives with the family he serves.¹⁰⁵ Though he is always in the household, he is not part of the household.¹⁰⁶ Andrew is at the beck and call of everyone in the household, and as is the case for many alien domestics, there is no real end to work.¹⁰⁷ Eventually, however, Andrew seeks to define and limit his servitude, and thus raises conflict in the household.

VIII. FREEDOM AND THE SEARCH FOR SELF

Though Andrew the Android is at first happy to be of service only for the sake of serving, he asks several years into his servitude what one does to obtain freedom. When Andrew attempts to buy his freedom, his owner lashes out angrily at his younger daughter, "Little Miss", accusing her of fomenting in Andrew ideas of freedom. The younger daughter retorts that it is the master himself who has taught ideals of freedom, by allowing and encouraging Andrew to learn and to think. Given the parallel between androids and the oppressed human domestic, the film follows a predictable path at this juncture. Andrew's employer, like some patriarchal employers who sponsor aliens as domestic servants, is willing only to nominally free Andrew. He was unwilling to allow him an existence as an individual who could come and go at will. Because Andrew insisted on his own residence, he was cast out permanently.¹⁰⁸ Here, the viewer notes

105. See STEINBERG, *supra* note 37, at 157.

Domestic work . . . had the earmarks of feudalism. Lacking a separation between work and home, the domestic was, in effect, bonded to her employer, and scarcely an aspect of her life escaped scrutiny and regulation. The domestic had virtually no time, and except for the limited privacy of her maid's room, no space that she could claim as her own. . . . To be sure, she was nominally free to quit, but lacking a home of her own, she could hardly risk the perils of being unemployed.

Id.; see also Peggie R. Smith, *Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform* 48 AM. U. L. REV. 851, 876 (1999) ("Commentators who invoked the image of the menial to help explain the intense lack of freedom enjoyed by paid household workers were tapping into certain obvious parallels: namely that both paid household workers and menial servants performed domestic tasks and often resided with the employing household.").

106. See SUTHERLAND, *supra* note 66, at 34 ("...servants were in the household but not of it; they were, in the language of a popular, sympathetic description of the servant's plight, 'strangers within the gates.' Employers regarded servants as 'aliens' and 'sphinxes,' unknown and unknowable.").

107. *Id.* at 34-38, citing Erna Magnus, *The Social, Economic, and Legal Conditions of Domestic Servants*, 30 INT'L LAB. REV. 190, 196 (1934) (suggesting that the duties of a live-in servant are indefinite).

108. See, for example, LEON F. LITWACK, *BEEN IN THE STORM SO LONG* 294 (1980), in which he quotes former slave owners who discuss the departure of their slave:

Among the most faithful and best liked of the slaves had been Daniel, the first servant Jefferson Thomas had ever owned. "When we were married," Gertrude Thomas recalled, "his Father gave him to us to go in the Buggy."

that Andrew gains not only his personal freedom, but also freedom to use the article "I" in referring to himself; up until this time, he had referred to himself as "one" (as in the oft-repeated phrase: "One is glad to be of service").¹⁰⁹ This perhaps all too obvious reference to attainment of personhood becomes a watchword in the film, as Andrew travels the path to greater humanity.

After attaining freedom, Andrew's first task is to build himself a beach house, and then to set about a journey to find other androids like himself. With the help of Little Miss's now adult attorney son, Andrew set out on his odyssey. Andrew's journey is not unlike that of Odysseus; he is gone some fifty years. During this time he finds no other robots like himself. Eventually he encounters a female robot who appears to have independent thoughts and emotions. The female robot, equipped with her own built in sound track of Aretha Franklin songs, literally dances to her own music. Andrew follows her hip-swiveling gait through the streets of San Francisco. He is sorely disappointed when he follows the female robot home and learns that

Daniel was the first servant to depart, and he did so at night "without saying anything to anyone." He remained in town but the Thomases had no wish to see him again. "If he returns to the yard he shall not enter it."

109. Much has been written about the social and psychological significance of the pronouns "I". See EMILE BENVENISTE, *PROBLEMS IN GENERAL LINGUISTICS* 195 (Mary E. Meek trans. 1971); Roman Jakobson, *Two Aspects of Language and Two Types of Aphasic Disturbances*, in *FUNDAMENTALS OF LANGUAGE* 195-238 (Roman Jakobson & Morris Halle eds., 2d rev. ed. 1971). The absence of the pronoun "I" is often seen as method of formalizing and depersonalizing a message. For example, in legal writing or formal essay writing, the use of the pronoun "I" is forbidden, even though the author may be expressing a personal opinion. See LINDA HOLDEMAN EDWARDS, *LEGAL WRITING: PROCESS, ANALYSIS AND ORGANIZATION* 218-19 (1996); NANCY L. SCHULTZ & LOUIS J. SIRICO, JR., *LEGAL WRITING AND OTHER LAWYERING SKILLS* 138-39 (3d ed. 1998); HELENE S. SHAPO ET AL., *WRITING AND ANALYSIS IN THE LAW* 73-74 (3d ed. 1995). Use of the pronoun "I" may serve to imbue a statement with the speaker's own attributes, and thus enhance (or diminish) the value of the statements. Courts, for example, have frequently admonished prosecutors for use of the pronoun "I" in closing statements because of the possibility that the jury may find the prosecutor more credible, and hence, his characterization of the evidence, more credible. See, e.g., *United States v. Nersesian*, 824 F.2d 1294, 1328-29 (2d Cir. 1987).

There may be times, however, when even the pronoun "I" may be rife with ambiguity. For an interesting discussion on ambiguity in the use of the article "I," see GUSTAVO PÉREZ FIRMAT, *LIFE ON THE HYPHEN: THE CUBAN-AMERICAN WAY* 23-25 (1994), in which the author discusses issues of Cuban-American biculturalism. In one section he considers the development of the title of the television show "I Love Lucy". Though the "I" of the title purportedly referred to the actor-bandleader Desi Arnaz who played the husband of his real life wife Lucille Ball, the "I" was ambiguous in that it was not clear whether the "I" referred to Desi Arnaz or his fictional counterpart Ricky Ricardo. Moreover, sponsors and millions of fans loved Lucy, too. The "I" ultimately becomes a collective pronoun that operates to obliterate the presence of Desi Arnaz. It is reported that on his death bed, the actor Desi Arnaz said "that he wanted to be remembered as the 'I' in 'I Love Lucy.'" *Id.* at 23.

she is not motivated by any independent urge to creativity; she has only been upgraded to behave in a more human manner. Andrew, true to his "exemplary Other"¹¹⁰ status, can tolerate no other robot without the abilities which he possesses.¹¹¹ Andrew demeans the robot, and is hostile to her very existence, until he learns that she has been upgraded by none other than the son of his original creator, who happens also to have in hand the plans of his father to radically upgrade robots like Andrew.

In another bit of somewhat too obvious symbolism, Andrew is systematically recreated in human form by this latter day Creator, and soon becomes the inventor of some of his own biomechanical upgrades. Ageism and preoccupation with youth is by necessity touched upon here, as we see the initially ageless robot move through the years. When he contemplates his transformation to a more human appearance, he considers whether he should take on the visage appropriate to his actual years, 62, or whether he should appear as his creator suggests, twenty-five years younger. Andrew settles for a look that approximates a man in his early forties—not so young, but not so old either. One thinks at once of the French concept of *l'âge mûr*, an age of perfection somewhere between young and old, usually assumed to begin somewhere in the forties.¹¹²

After many years away, Andrew returns to his Little Miss. But unlike Odysseus' Helen of Troy, Little Miss does not hold up so well. Hers is no longer the face that launched a thousand ships—she has aged greatly, and is now the grandmother of an adult granddaughter, Portia, who is the image of herself when younger. After a rocky start, and the death of the original "Little Miss", Andrew quite conveniently transfers his affections to Portia, her youthful double. Like her namesake in Shakespeare's *MERCHANT OF VENICE*, Portia is "rich"—in compassion, for she accepts the love of Andrew, one who lacks all of the attributes of humanity. While Portia in *THE MERCHANT OF VENICE* is "arguably the most recognizable female 'attorney' in fiction,"¹¹³ unlike her namesake, this Portia is not a

110. See *supra* note 78 and accompanying text.

111. One attribute of the exemplary Other is that he (or she) seeks to avoid regular Others, usually in an effort not to be confused with them. Regular Others are often scorned for failing to attain the heights of exemplary Others. See generally Bartlett, *supra* note 66. An example of this would be the efforts of members of the black middle and upper middle classes to distinguish themselves from and avoid contact with the black lower classes. See E. FRANKLIN FRAZIER, *BLACK BOURGEOISIE* 176-191 (2d English ed., Collier Books 1962); see generally LAWRENCE OTIS GRAHAM, *MEMBER OF THE CLUB: REFLECTIONS ON LIFE IN A RACIALLY POLARIZED WORLD* (1995).

112. "Qu'est-ce qu'une grande vie? C'est un reve de jeunesse realise dans l'age mur" ["What is a great life? It is a dream of youth realized in the later age"] Louis Ratisbonne, "Journal des Debats", Oct. 4, 1863 (quoting Alfred Victor Vigny).

113. Christine Corcos, *Portia and Her Partners in Popular Culture: A Bibliography*,

lawyer. When the need arises for legal representation, Andrew represents himself. Andrew and Portia in fact complement each other even in their chosen professions; Andrew is an Outsider artist whose claims to creativity and independence are challenged. Portia is an art restorer who renovates the work of others. Portia is cast as only a secondary actor in the art world. Women, like many Others, are not always seen as artists in their own right, though they often hold privileged places in the worlds of art and literature and culture.¹¹⁴

IX. CROSS SPECIES LOVE AND FIGHTING STEREOTYPES

As Portia and Andrew are drawn to each other, they worry about how society will accept them, as they seem to represent an unnatural coupling. The relationship between a human and a robot challenges of the defined notions of sexuality; they are not homosexual, as there is no sameness about them in a sexual sense. They are also clearly not heterosexual in the traditional sense, and yet they are clearly "other-sexed" in relation to each other.¹¹⁵ Similarly, they are racially different given all the ways that we have defined race.¹¹⁶ The sexual and racial hyperalterity of Andrew and Portia makes the couple an interesting way of looking at differentness. Indeed, one of the

22 LEGAL STUD. F. 269, 274 (1998).

114. As Simone de Beauvoir wrote in *THE SECOND SEX*:

To be situated at the margin of the world is not a position favorable for one who aims at creating anew: here again, to emerge beyond the given, it is necessary first to be deeply rooted in it. Personal accomplishment is almost impossible in the human categories that are maintained collectively in an inferior situation.

SIMONE DE BEAUVOIR, *THE SECOND SEX* 132 (1968).

115. See Katherine M. Franke, *The Central Mistake of Sexual Discrimination Law: The Diaggregation of Sex from Gender*, 144 U. PA. L. REV. 1 (1995) (explaining "the notion that sex and gender are two distinct aspects of human identity"). Franke suggests that "[s]ex is regarded as product of nature, while gender is understood as a function of culture." *Id.* This, says the author, is a mistake, since it is in no way clear that biological sexual differences are valid. *Id.* at 1-2. See also Patricia A. Cain, *Stories from the Gender Garden: Transsexuals and Anti-Discrimination Law* 75 DENV. U. L. REV. 1321, 1323 (1998), (considering sex, gender, and sexual orientation, and how persons who are sexually and gender ambiguous face isolation and rejection in the law, and even in so-called progressive communities).

116. For a discussion of the parameters of race and the racial taxonomy in general see, for example, Adrienne D. Davis, *Identity Notes Part One: Playing in the Light*, 45 AM. U. L. REV. 695 (1996). See also NOEL IGNATIEV, *HOW THE IRISH BECAME WHITE* 1, 34-59 (1995); Neil Gotanda, *A Critique of "Our Constitution Is Color Blind,"* 44 STAN. L. REV. 1 (1991); D. Marvin Jones, *Darkness Made Visible: Law, Metaphor, and the Racial Self*, 82 GEO. L.J. 437 (1993); Ian F. Haney López, *The Social Construction of Race: Some Observations of Illusion, Fabrication and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994); Neil Gotanda, *"Other Non-Whites" in American Legal History: A Review of Justice at War*, 85 COLUM. L. REV. 1186 (1985) (reviewing PETER IRONS, *JUSTICE AT WAR* (1983)).

puzzling issues of the film is just how to characterize the "difference" between Andrew and Portia. The point may be of course that it simply does not matter, and that what we should see in this ambiguity is a call for a move away from reliance upon biological norms.¹¹⁷ This would allow for some degree of human agency, such as would allow a person to assert his or her own gender or race without reference to biological norms, and certainly without reference to historical or cultural imperatives.¹¹⁸

For Andrew to reach sexual oneness with Portia, he undertakes a series of alterations. He achieves first, through his Creator/reinventor one of the most momentous upgrades to date: the ability to eat, and to have sexual intercourse. Prior to this upgrade, Andrew has lived a life of unrelenting monasticism; his love has been pure and platonic.¹¹⁹ It is interesting to note the pairing of these two acts, eating and sexuality. It raises age old of sex as symbolic anthropophagy, an act of consuming the other.¹²⁰ "Of course," the viewers are told, he will be unable to procreate. This immediately raises an issue about their desire to marry. The rationale for the civil institution of marriage is in essence an adoption of the Judeo-Christian rationale for marriage: the primary function of marriage is the legitimization of sexual relations between man and woman, chiefly for the purpose of procreation. This rationale has been used as a reason for rejecting, among other things, gay marriage as a legitimate social partnership, and as a basis for conferring a whole host of benefits, such as immigration privileges.¹²¹

At this juncture of the film I ask, why would the couple *not* be able to procreate? We are, after all, dealing in the realm of science fiction and fantasy. It is perhaps not surprising that the film skirts away from cross-species procreation. For much of the history of the United States, even into this new millennium, intermixing between even the human "varieties" has caused discomfort and even alarm. Beginning in the nineteenth century, proponents of polygenesis and racial hierarchy argued that blacks and other "darker" races are, or

117. See Franke, *supra* note 115 at 1-2.

118. See *id.*

119. Platonic, as used only in the sense of the asexual. It has become increasingly clear that this use of Platonic is narrow at best and erroneous at worse, as it would appear that the Plato himself advocated both homosexual and heterosexual coupling. See Martha Nussbaum, *Platonic Love and Colorado Law: The Relevance of Ancient Greek Norms to Modern Sexual Controversies* 80 VA. L. REV. 1515 (1994). But this platonic love is, writes Simone de Beauvoir, the hypocritical justification of carnal love. See DE BEAUVOIR, *supra* note 114, at 533-534.

120. See DE BEAUVOIR, *supra* note 114.

121. See, e.g., *Adams v. Howerton*, 673 F.2d 1036 (9th Cir. 1982) (holding that the Immigration and Nationality Act provisions which allow spouses to confer immigration benefits excluded persons of the same sex).

are becoming, a separate species which is headed towards extermination. Thus, race-mixing is a horror to be avoided, as the offspring of separate "species" would naturally be feeble and infertile.¹²² Persons produced from such cross-species unions are thus the misbegotten offspring of an unnatural union, and destined ultimately to a life of tragic inutility and fruitlessness.¹²³ The so-called tragic mulatto figure was often the subject of film depictions, and was a poignant reminder to those tempted to stray across racial boundaries.¹²⁴

Though such views are held by fewer and fewer people, the problem of racial "hybridity" retains currency for a substantial minority of persons in American society.¹²⁵ Having set up the robotic

122. See GEORGE M. FREDRICKSON, *THE BLACK IMAGE IN THE WHITE MIND: THE DEBATE ON AFRO-AMERICAN CHARACTER AND DESTINY, 1817-1914* at 79-80, 232-235 (Weslyan University Press 1987)(1971).

123. See *id.* at 277. Lest it seem that such views were found only among certain nineteenth and early twentieth century racists, such "scientific racism" is alive and well into the twenty-first century. See, e.g., "The African Eve: New Confirmation that We All Came from Africa," *The Journal of Blacks in Higher Education*, Winter 2000/2001 62. Besides "scientific" explanations for forbidding cross-racial sexual unions, opposition to such relationships is still firmly entrenched among at least a substantial numerical minority of Americans. One of the most recent widely reported cases was of a high school principal in Wedowee, Alabama who threatened to cancel the high school prom if interracial dating occurred. When questioned by a girl of mixed black and white parentage about how she was to observe the interracial dating ban, according to the student and several others in attendance, he told her that she was "a mistake" and that her parents should not have had her. Further, he is reported to have said that his ban on interracial dating was to prevent more "mistakes" like her from occurring. Eric Harrison, *Principal's Race Comments Spur Small-Town Uproar*, L.A. TIMES, Mar. 16, 1994 at A1. More recently, many criticized attorney general John Ashcroft for having spoken at and accepted an honorary degree at Bob Jones University, during the time that University maintained an official policy against interracial dating. The ban was only recently rescinded in 2000, but not before then governor and now President George W. Bush had also spoken there while campaigning. See, e.g., Wayne Washington, *Black Leaders Ponder Bush Puzzle*, BOSTON GLOBE, Feb. 3, 2001, at A1; see also Eric Lichtblau, *A Narrow Win For Ashcroft*, L.A. TIMES, Feb. 2, 2001, at A1.

124. See DONALD BOGLE, *TOMS, COONS, MULATTOES, MAMMIES, AND BUCKS: AN INTERPRETIVE HISTORY OF BLACKS IN AMERICAN FILMS* 9 (1989); PAUL R. SPICKARD, *MIXED BLOOD: INTERMARRIAGE AND ETHNIC IDENTITY IN TWENTIETH-CENTURY AMERICA* (1989); JOEL WILLIAMSON, *NEW PEOPLE: MISCEGENATION AND MULATTOES IN THE UNITED STATES* (1980); Hawley (Russell) Fogg-Davis, *Identity Under Construction: A "Tragic Mulatto" Goes to Work*, 3 LIGHTHOUSE 111 (April 1993); Cynthia L. Nakashima, *An Invisible Monster: The Creation and Denial of Mixed-Race People in America*, in *RACIALLY MIXED PEOPLE IN AMERICA* 162 (Maria P. P. Root ed., 1992).

125. In November 2000 the voters of Alabama invalidated a nineteenth century provision which barred the Alabama legislature from making any laws which would allow interracial marriages; though the provision was invalidated, a full forty percent of the electorate voted to retain the provision. Randall Kennedy, *Marital Color Line*, THE NATION, Dec. 25, 2000, Vol. 271, No. 21, at 8.

Other, is it just too "icky" for viewers to think of the offspring of such a union?

After Andrew and Portia consummate their union, they ponder how to overcome the societal barrier to their relationship. The answer of the new millennium seems much like the answer of the twentieth century: litigate. Notwithstanding what appear to be the tremendous odds against success, the cultural myth of having one's day in court causes Andrew to seek relief before a judicial body.¹²⁶ Though there are perhaps other broader issues in Andrew's fight which render his struggle not only personal but political, ultimately Andrew, like many Americans, prefers due process over popular sovereignty.¹²⁷ He petitions a World Conference, which seems to be some sort of global high court and asks to be declared human based upon his feeling, his emotions, and his biomechanical upgrades. His petition is denied by the court, because he does not possess that which the court considers to be the quintessential human attribute: Andrew is not mortal, he cannot die.

X. BLOOD, BELONGING, AND SOVEREIGNTY

As the film progresses, we learn that while Andrew remains the same, his partner Portia falls victim to the natural process of aging. Though Andrew is able to stave off some of the worst ravages of her aging via his biomechanical innovations, Portia will continue to age. Finally, Portia confronts the obvious; she will die, as do all mortals. Portia tells Andrew that she no longer wishes to try to put off the inevitable. In one of the multiple ironies of the film, Andrew, who was born with eternal life, seeks mortality because of his partner's concerns about her own mortality and her desire to die as a part of the natural order of things. In the continuing irony, Andrew seeks out the reinventor/God to give him a mortal life span. In true Messianic fashion, this "son" of the reinventor/God chooses to sacrifice eternal life. His sacrifice is, much like ritual transubstantiation, via the body and the blood.¹²⁸ In the ultimate

126. See, e.g., Lawrence Rosen, *A Consumer's Guide to Law and the Social Sciences*, 100 YALE L.J. 531, 540 (1990) (noting the American desire to have a hearing in court).

127. *Id.* (internal quotations omitted). Popular sovereignty is the notion that legitimate political authority within a society derives ultimately from the will consent of the governed. It is, hence, a notion of the collective, and may sometimes be in conflict with generalized notions of due process, in which the rights of the individual are paramount. See e.g., JULIE MOSTOV, *POWER, PROCESS, AND POPULAR SOVEREIGNTY* (1992).

128. The doctrine of transubstantiation, in which wine and bread are converted into the body and blood of Christ, is at the heart of Roman Catholicism and much of Christianity. See e.g., WILLIAM JAMES DURANT et al., *CAESAR AND CHRIST: A HISTORY OF ROMAN CIVILIZATION FROM ITS BEGINNINGS TO A.D. 337* (STORY OF CIVILIZATION, VOL. 3) (1983).

reversal, Andrew, who has systematically been given the body of man now is finally given that which will degrade his system and cause him to die: the blood of man.

This infusion of blood raises yet another irony of racial and ethnic purity, and the nature of foreigner status. Blood is often the metaphor for hierarchy and ascendancy.¹²⁹ In many western nations, access to citizenship and all of its privileges was premised upon the concept of "jus sanguinis," literally "right of blood" by which citizenship is conferred based upon one's parents, regardless of place of birth.¹³⁰ This synechdochical use of blood to connote an entire people, and privilege, has allowed us to transform it from the symbolic to the mythic. Dynasties have been erected, and wars fought, in order to maintain the primacy of "the pure-blooded." Protection of the blood becomes one of the goals of western jurisprudence, as we see norms developed with reference to a sovereign,¹³¹ and the notion of sovereignty dependent entirely on hierarchy and ascendancy, and thus ultimately, blood. It is perhaps ironic then that it is in the United States, with its republican form of government, and democratic ideals that we first see laws established to prevent race mixing.¹³² Courts routinely upheld such statutes, frequently opining that separation of the races was part of God's ordering of the world.¹³³ To mix the blood of a "pure" race, in the United States, the white race, with that of other races, was to cause "corruption of blood"¹³⁴ which "weaken[s] or destroy[s] the quality

129. See *Naim v. Naim*, 87 S.E. 2d 749 (1955).

130. See *Miller v. Albright*, 523 U.S. 420, 476-477 (1998); *Rogers v. Bellei*, 401 U.S. 815, 828 (1971); *U.S. v. Wong Kim Ark*, 169 U.S. 649, 702 (1898).

131. See, e.g., *Johnson v. Macintosh*, 21 U.S. (8 Wheat.) 543 (1823).

132. As Professor Derrick Bell writes, "virtually all the American colonies, and later the states" enacted bans on racially mixed marriages. DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* 56 (2d ed. 1980). On the other hand, it is perhaps not so ironic that in a country without a monarchy and an established aristocracy and without the tacit understandings of class differences built up over a long history, that we have seen the need to build a caste system into our legal system.

133. In *Loving v. Virginia*, 388 U.S. 1, 3 (1967) the trial judge, in upholding the Virginia anti-miscegenation statute, wrote:

Almighty God created the races white, black, yellow, Malay, and red, and He placed them on separate continents. And but for the interference with His arrangement, there would be no cause for such marriages. The fact that He separated the races shows that He did not intend for the races to mix.

134. *Naim*, 87 S.E. 2d at 756. Note that "corruption of blood" was defined in early Anglo jurisprudence as a bill of attainder which punished persons convicted of certain crimes such that the person could neither "inherit lands nor retain those he already had, nor transmit them by descent to any heir, because his blood was considered in law to be corrupted." BLACK'S LAW DICTIONARY 345 (6th ed. 1990). Corruption of blood is prohibited under the United States Constitution. U.S. Const. Art. III, Sec. 3. Compare *Korematsu v. United States*, 323 U.S. 214, 243-244 (1944) with *Naim*, *supra*.

of . . . citizenship."¹³⁵ For Andrew, the quintessential outsider, no blood is pure, as it works upon him the ultimate corruption. Once Andrew is transfused with human blood, he can expect to die within thirty to forty years. Andrew's quest for human life has meant embracing physical deterioration and death. It would appear, as law professor Patricia Williams has stated in a discussion of the legal ethical issues surrounding the body, that "in our culture," there is "nothing we love so much as a suffering body to idealize."¹³⁶ Life and death become not simply physiological states, but sanctioned events.¹³⁷

XI. THE FINAL TRIBUNAL, AND DEATH AS THE PRICE OF ASSIMILATION

Near the end of the film we see an aged Andrew come before the tribunal again to reassert his claim to humanity. Along with all of the other changes which he has undergone, he now has mortality, the trait which he lacked when he appeared years before. The appearance of the aged, decrepit Andrew is a poignant statement about the nature of total assimilation. Andrew has quite literally remade himself and given his all in order to gain freedom from the image of the Other. In perhaps the greatest irony of the film, death is the price of such assimilation. The condition of being subjugated to others, the loss of natal rights and the sense of fully belonging were attributes of slavery. This disenfranchisement of the slave was often originated as or conceived of as a substitute for death. Here, Andrew must undergo actual death to attain his freedom.¹³⁸

Things have changed at the second tribunal; two hundred years into the new millennium, the tribunal is headed by a black woman. This jurist, we are left to assume, knows a thing or two about freedom and personhood. She "gets it" in a way that the chief jurist of the first court proceeding did not. She declares Andrew human. Just as in Shakespeare's *MERCHANT OF VENICE*, there is victory in court.

In *Korematsu*, the Supreme Court upholds Congress's wartime exclusion of all persons of Japanese descent. There, Justice Jackson in his dissent decries the Japanese exclusion, and suggests that it is violation of the Constitutional prohibition on corruption of blood and other bills of attainder, for the exclusion order punishes persons due to their heredity. Thus, the Naim court's use of the term seems to have an entirely different meaning than that which had earlier developed in Anglo-American jurisprudence.

135. Naim, 87 S.E. at 756. For a further discussion of the relationship between race, foreignness and citizenship see, e.g. Lolita K. Buckner Inniss, *Tricky Magic: Blacks As Immigrants and the Paradox of Foreignness*, 49 DE PAUL L. REV. 85 (1999); Leti Volpp, *Obnoxious to Their Very Nature: Asian Americans and Constitutional Citizenship*, 5 CITIZENSHIP STUDIES 57 (2001).

136. PATRICIA WILLIAMS, *THE ROOSTER'S EGG* 236 (1995).

137. *Id.* at 237.

138. See ORLANDO PATTERSON, *SLAVERY AND SOCIAL DEATH* 4-14 (1982).

The victory for Andrew, however, comes too late: he had expired minutes before the decision. In a twist from Shakespeare's *Merchant of Venice*, it would seem that this Portia has, rather than saving Andrew from the extraction of the pound of flesh, demanded it herself. As a "man" now of flesh and blood, he dies. His faithful companion Portia asks their nurse, an upgraded robot whose rights Andrew had fought for, to unplug her from life supports.

XII. CONCLUSION

I must confess some initial discomfort at the parallel between the robotic Other and any human Other. After all, if Andrew were considered not quite as good as human, is that not fitting for something which is a creature of human innovation? Are my feelings about the robotic Other simply variegated speciesism? Luckily, I suppose, we need not delve too far here, as advanced humanoid forms are as yet, many years away.

This film brings into clearer focus some of the debates surrounding membership in the body politic achieved via the process of assimilation. Does Andrew seek to become human because it is intrinsically valuable, or is it because he is faced with rejection as a robot? Much the same question is asked by immigration advocates who wonder if foreigners seek incorporation into the American body politic. Is this desire to incorporate because of their commitment to American ideals, or is it in order to avoid discrimination against aliens? As a result of a series of legislative changes in the waning years of the twentieth century, aliens now face more barriers to things like legal process and social service than have been seen in the previous seventy-five years of immigration law.¹³⁹ The motivation for assimilation, fear or pride, becomes important to understanding what kind of citizens we can expect to result from such incorporation.

139. See, e.g. *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* ("IIRIRA") Pub. L. No. 104-208, 110 Stat. 3009 and the *Personal Responsibility and Work Opportunity Reconciliation Act* ("the Welfare Act") Pub. L. 104-193, 110 Stat. 2105 (barring access to welfare benefits for many noncitizen recipients). *Antiterrorism and Effective Death Penalty Act of 1996* Pub. L. No. 104-32, 110 Stat. 1214 (1996).